

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PATRICK TOUSSAINT,	:	
	:	
Plaintiff	:	
	:	CIVIL NO. 1:CV-05-0913
vs.	:	
	:	(Judge Caldwell)
SUPERINTENDENT EDWARD KLEM,	:	
et al.,	:	
	:	
Defendants	:	

M E M O R A N D U M

I. Introduction.

Plaintiff has filed a motion for reconsideration of our January 26, 2007, order granting in part, and denying in part, defendants' motion to dismiss. For the reasons set forth below, the motion will be denied.

II. Background.

Patrick Toussaint, a state inmate formerly housed at the Mahanoy State Correctional Institution ("SCI-Mahanoy"), Frackville, Pennsylvania initiated this civil rights alleging he was assaulted by staff, verbally harassed, given a misconduct in retaliation for his failure to admit to his sex charge, and required to work like a slave. (Doc. 25, Amended Complaint). On

January 20, 2006, the Court granted in part, and denied in part, defendants' motion to dismiss. (See Doc. 54). All claims against Counselor Griffin, CO Kabilko and Sgt. Sallaway were dismissed. (*Id.*) The following defendants and claims remain: (1) an Eighth Amendment failure to protect claim against Superintendent Klem and Unit Manager Vuksta; (2) an Eighth Amendment excessive-force claim against CO Mull and CO Thoryk; and (3) a retaliation claim against Unit Manager Vuksta for allegedly ordering a corrections officer to issue Toussaint a misconduct. (*Id.*)

III. Standard of Review.

Because our order dismissed only some of the claims and some of the defendants, it is interlocutory in nature. See Fed. R. Civ. P. 54(a) and (b). As an interlocutory order, it is subject to revision "when consonant with justice to do so." See *United States v. Jerry*, 487 F.2d 600, 605 (3d Cir. 1973); *Gridley v. Cleveland Pneumatic Co.*, 127 F.R.D. 102, 103 (M.D. Pa. 1989) (quoting *Jerry*); *Philadelphia Reserve Supply Co. v. Nowalk & Associates, Inc.*, 864 F. Supp. 1456, 1460-61 (E.D. Pa. 1994). See also *Gallant v. Telebrands Corp.*, 35 F. Supp. 2d 378, 394 (D. N.J. 1998).

IV. Discussion.

In his motion for reconsideration Toussaint alleges that the Court's order dismissed "four (4) Defendants" from his action. (See Doc. 59). Although he does not identify the dismissed defendants by name, he does suggest that they "are indeed liable for their wrong doings". (*Id.*) As Toussaint fails to identify any factual error or legal error in our January 2007 Order with respect to our dismissal of defendants Griffin, Kabilko or Sallaway, his motion for reconsideration will be denied.

Most of Toussaint's motion for reconsideration restates his claims against Superintendent Klem. However, as our January order clearly states, Superintendent Klem is still a defendant in this action. Toussaint's Eighth Amendment failure-to-protect claim survived defendants' motion to dismiss. (See Doc. 54, pp. 11 - 14).

Plaintiff's Eighth Amendment claim alleging Superintendent Klem was deliberately indifferent to his alleged serious medical needs after the alleged April 2005 assault, however, was dismissed due to Toussaint's failure to allege Klem's personal involvement in the denial of medical treatment. Toussaint, in his motion for reconsideration, does not indicate overlooked facts or information that would suggest that he

informed Superintendent Klem of his unaddressed need for medical attention after the alleged assault. (See Doc. 59).

Accordingly, Toussaint's motion for reconsideration will be denied.

We will issue an appropriate order.

/s/William W. Caldwell
William W. Caldwell
United States District Judge

Date: August 6, 2007

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et al.,	:	
	:	
Defendants	:	

O R D E R

AND NOW, this 6th day of August, 2007, it is ordered
that Toussaint's Motion for Reconsideration (doc. 59) is denied.

/s/William W. Caldwell
William W. Caldwell
United States District Judge